

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

CHARLES W. STARNES,

Plaintiff,

v.

MILTON GILLESPIE, et. al.,

Defendants.

CIVIL ACTION

No. 01-3430-CM

MEMORANDUM AND ORDER

Plaintiff, who is currently incarcerated in Hutchinson Correctional Facility and is proceeding pro se, filed this action on October 23, 2001, alleging various violations of his constitutional rights pursuant to 42 U.S.C. § 1983 and of various Kansas state statutes during his imprisonment in the Rice County jail in 2000 and 2001. On July 18, 2002, the court granted plaintiff's motion to dismiss his claims against defendants Scott Bush, Chris Oakley, Dale Diener, and James Lairmore. This matter comes before the court on defendants Tracy Bonham, Steve Bundy, Patrissa Geniuk, Milton Gillespie, Cody Gorfourth, Tom Thomas, and Brian Thressters'¹ Motion for Summary Judgment (Doc. 55) and defendant Randy Galliard's Motion for Summary Judgment (Doc. 76).

I. Facts

¹ Defendant Brian Thresster is named in the pleadings as "Brian Thresster." However, defendant Thresster has submitted an affidavit in this case and signed it as "Brian Treaster." The court will refer to him from this point forward as defendant Treaster.

As an initial matter, the court notes that plaintiff's response to defendants' Motions for Summary Judgment wholly fails to controvert defendants' facts, which are appropriately numbered and referenced to the record in support thereof. Local Rule 56.1 requires that a party opposing a motion for summary judgment set forth each fact in dispute and refer with particularity to those portions of the record upon which it relies in disputing such factual contentions. *Id.* 56.1(b)(1). Accordingly, those material facts which plaintiff has failed to adequately controvert are deemed admitted for purposes of summary judgment. *Id.* 56.1(b)(2). However, since plaintiff appears pro se, the court will liberally construe any facts alleged by plaintiff in the light most favorable to plaintiff pursuant to Federal Rule of Civil Procedure 56.

In July 2000, plaintiff was incarcerated in the Rice County jail. On July 9, 2000, deputies observed plaintiff and another inmate acting as if they were about to fight. Plaintiff claims the other inmate hit him with his fist and knocked him to the floor. Plaintiff claims he tried to catch himself by putting his hand out in front of him. As a result, plaintiff claims, his finger was bent out of shape. Following the incident, plaintiff was placed in a segregation cell for four days. Defendants claim that they did this as a matter of practice, usually at least overnight, to avoid a fight and let things cool off. The segregation cell was a single man cell with a cement bunk, sink and toilet. The cell had a mat, pillow, sheets, pillowcase and blanket. The sink and toilet both worked, but the sink had very low water pressure. Defendants claim that, because of the low water pressure, plaintiff was furnished a pitcher of water and a cup for drinking purposes and was provided an opportunity to shower every day that he was in segregation. At that time, the jail was in the process of being replaced with a new facility; the new jail is now complete and in use.

Plaintiff claims that, during the four days he was in segregation, he was not allowed to send out or receive mail, not allowed to contact his attorney, not allowed to shower or clean the cell, and was unable to

drink water, wash his face, or brush his teeth because there was no water pressure in his cell. Plaintiff claims that, while he was in segregation, he made several complaints to jail staff about his finger and that he was in severe pain.

Defendants claim that when plaintiff was placed in segregation on July 9, 2000, he made no complaints about a finger injury. Deputies recall that plaintiff complained only about his shoulder. On July 10, 2000, defendants made plaintiff an appointment to see a physician on July 14, 2000, for the complaint about his shoulder.

On July 13, 2000, plaintiff was released from segregation back to general population. That day, defendant Treaster observed plaintiff's finger and suggested that he have it looked at. The next day, plaintiff saw physician's assistant (P.A.) Diener at the Lyons Medical Center. P.A. Diener's notes do not contain any mention that plaintiff complained about his finger during the appointment. Plaintiff returned to the Rice County jail without being treated for his finger injury. In a subsequent note made by P.A. Diener on August 23, 2000, P.A. Diener stated that he did not remember seeing the finger injury before and had made no comment on it in his dictation of July 14, 2000. Defendant Treaster, who accompanied plaintiff to the July 14, 2000, appointment, recalls that plaintiff mentioned the finger to P.A. Diener but that P.A. Diener made no recommendations and offered no treatment.

After July 14, 2000, plaintiff filled out several medical request forms: one on July 24, 2000, one on July 30, 2000, and two on August 12, 2000. None of the request forms mentioned a finger injury. The first mention plaintiff made of his finger injury in a written form was on August 21, 2000. P.A. Diener again saw plaintiff on August 23, 2000. P.A. Diener x-rayed plaintiff's finger; the x-rays showed a fracture in his

finger. P.A. Diener's plan indicated that he would refer plaintiff to an orthopedist in Hutchinson and would re-evaluate plaintiff in two weeks.

On September 12, 2000, plaintiff filled out a request form seeking medical treatment for a rash on his penis. Defendants allege that, the same night, at approximately midnight, plaintiff began kicking and pounding on his cell door and screaming and yelling profanities. Defendant Thomas opened the door, stepped into the cell and advised plaintiff that he needed to stop the disruptive behavior. Defendant Thomas alleges that he may have threatened plaintiff with more segregation time or loss of other privileges, but that he did not threaten plaintiff with physical harm. Plaintiff agrees that the incident between him and defendant Thomas occurred on September 12, 2000. However, plaintiff claims that he was, at that time, housed in segregation, that he asked for a drink of water because the cell had no running water, and that in response to his request, defendant Thomas threatened him with physical harm. The parties agree that plaintiff was not physically attacked or harmed in any way during the discussion with defendant Thomas.

P.A. Diener saw plaintiff on September 14, 2000. P.A. Diener wrote a prescription referring plaintiff to an orthopedist. On September 15, 2000, defendants made plaintiff an appointment with an orthopedic doctor, Dr. Hart. Dr. Hart saw plaintiff in Hutchinson, Kansas, on September 22, 2000. However, P.A. Diener had not instructed the deputies who escorted plaintiff to the appointment to take the x-rays he had taken of plaintiff's finger to Dr. Hart. Thus, the x-rays were not available, and Dr. Hart declined to see plaintiff. However, Dr. Hart's office called the Lyons Medical Center the same day and prescribed a stack's splint for plaintiff's finger injury. Plaintiff claims he received the splint on October 25, 2000. Plaintiff claims he was not instructed how to apply the splint to his finger and, therefore, he

misapplied the splint and wore it backwards for approximately four weeks. Plaintiff claims that wearing the splint backwards further aggravated his finger injury.

Plaintiff claims that, after about four weeks of wearing the splint, he again complained to jail staff about his finger. Defendants called Dr. Hart to make plaintiff another appointment. Dr. Hart advised that he did not need to see plaintiff. On December 28, 2000, P.A. Diener wrote a letter advising further evaluation of the finger. Defendants then made plaintiff an appointment to see a different orthopaedist, Dr. Lairmore. Dr. Lairmore saw plaintiff on January 9, 2001, and again on January 23, 2001. Dr. Lairmore's notes reflect that he did not believe even a splint was required because plaintiff's finger fracture had healed. Dr. Lairmore released plaintiff with no restrictions.

Plaintiff claims his finger is permanently disfigured. Plaintiff also contends that the finger injury has impacted his ability to engage in artistry. However, when defendant Treaster transported plaintiff to Winfield Correctional Facility in June 2001, plaintiff showed him artwork that plaintiff created after leaving the Rice County jail.

Plaintiff's Amended Complaint alleges that he began complaining about not having access to legal materials and information in mid-January 2001. Plaintiff's jail file contains three request forms dated January 30, 2001. One form requests information about his rights with regard to interviews; one form requests information about the work detail program; a third form requests information about rights and statutes on Kansas inmate treatment. In response to plaintiff's request for information on rights and statutes, defendants referred plaintiff to his court-appointed attorney. In a request form dated February 2, 2001, plaintiff indicated that he was obtaining the requested statutes from his attorney. Plaintiff subsequently filed this

action on October 23, 2001. Plaintiff's amended complaint requests surgery and after care for his hand, and a \$40,000.00 cash settlement for his alleged injuries.²

All of the remaining defendants, except for Jeff Coonce, have joined in motions for summary judgment. Defendants claim that: 1) plaintiff will not be able to prove that defendants acted with deliberate indifference in failing to provide him medical treatment for his finger; 2) plaintiff's condition of confinement claims are barred by the Prison Litigation Reform Act (the PLRA), 42 U.S.C. §1997e(e); 3) plaintiff cannot meet his burden of proof in establishing an unconstitutional condition of confinement claim; 4) plaintiff's assault claim is barred by the PLRA because he does not allege physical harm occurred; 5) plaintiff's claim that he was denied access to legal materials is barred by the PLRA because he has alleged no harm as a result of any denial of access to legal materials; 6) plaintiff's claims against defendants Bundy and Gillespie in their official capacities as sheriffs are barred by the Eleventh Amendment; and 7) the court does not have subject matter jurisdiction over plaintiff's state law supervisory liability claim.

Plaintiff claims genuine issues of material fact exist regarding: 1) whether plaintiff complained to defendants about his finger and requested medical treatment; 2) whether plaintiff was allowed to send out and receive mail while he was in segregation, to contact his attorney, to shower or clean his cell, to drink water or to wash his face and brush his teeth; 3) whether plaintiff was threatened with physical harm while he was confined in the Rice County jail; 4) whether plaintiff was denied access to a law library or to persons

² In his opposition to defendants' summary judgment motions, plaintiff contends that he also seeks declaratory and injunctive relief based on the denial and delay of medical care, unconstitutional conditions of confinement, assault, and denial of access to the courts. The court will not consider claims which plaintiff did not include in his complaint and presents for the first time in a response brief. *See Turner v. McKune*, No. 00-3456, 2001 WL 1715793, at *3 (D. Kan. Dec. 21, 2001). In any event, plaintiff's requests for declaratory and injunctive relief would have been moot by the time plaintiff filed this lawsuit, as he has not been incarcerated in the Rice County jail since June 2001.

trained in the law to assist him during his confinement; 5) whether defendants' alleged actions constituted deliberate indifference to plaintiff's serious medical needs; and 6) whether plaintiff's injuries resulted from defendants' deliberate indifference and malicious disregard of his constitutional rights. Plaintiff claims that these alleged issues of material fact preclude summary judgment.

II. Summary Judgment Standards

Summary judgment is appropriate if the moving party demonstrates that there is "no genuine issue as to any material fact" and that it is "entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In applying this standard, the court views the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). A fact is "material" if, under the applicable substantive law, it is "essential to the proper disposition of the claim." *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). An issue of fact is "genuine" if "there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way." *Id.* (citing *Anderson*, 477 U.S. at 248).

The moving party bears the initial burden of demonstrating an absence of a genuine issue of material fact and entitlement to judgment as a matter of law. *Id.* at 670-71. In attempting to meet that standard, a movant that does not bear the ultimate burden of persuasion at trial need not negate the other party's claim; rather, the movant need simply point out to the court a lack of evidence for the other party on an essential element of that party's claim. *Id.* at 671 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)).

Once the movant has met this initial burden, the burden shifts to the nonmoving party to “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256; *see Adler*, 144 F.3d at 671 n.1 (concerning shifting burdens on summary judgment). The nonmoving party may not simply rest upon its pleadings to satisfy its burden. *Anderson*, 477 U.S. at 256. Rather, the nonmoving party must “set forth specific facts that would be admissible in evidence in the event of trial from which a rational trier of fact could find for the nonmovant.” *Adler*, 144 F.3d at 671. “To accomplish this, the facts must be identified by reference to affidavits, deposition transcripts, or specific exhibits incorporated therein.” *Id.*

Finally, the court notes that summary judgment is not a “disfavored procedural shortcut,” rather, it is an important procedure “designed to secure the just, speedy and inexpensive determination of every action.” *Celotex*, 477 U.S. at 327 (quoting Fed. R. Civ. P. 1).

The court acknowledges that plaintiff appears pro se and his response is entitled to a somewhat less stringent standard than a response filed by a licensed attorney. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, this does not excuse plaintiff from the burden of coming forward with evidence to support his claims as required by the Federal Rules of Civil Procedure and the local rules of this court. *Pueblo Neighborhood Health Ctrs., Inc. v. Losavio*, 847 F.2d 642, 649 (10th Cir. 1988). Even a pro se plaintiff must present some “specific factual support” for his allegations. *Id.*

III. Analysis

A. Medical Treatment Claim

Plaintiff’s amended complaint alleges that defendants inflicted cruel and unusual punishment in violation of the Eighth Amendment because they did not immediately treat his finger injury when he complained. Defendants argue that they are entitled to summary judgment because plaintiff cannot show that

defendants were deliberately indifferent to any serious medical needs. Defendants specifically argue that plaintiff had no serious medical need with regard to his finger injury, and that defendants took reasonable steps to treat his finger injury once they were aware of it.

Prison officials violate the Eighth Amendment when they are deliberately indifferent to an inmate's serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980). A medical need is "serious" if it has been diagnosed by a physician as one requiring treatment or if it is so obvious that even a lay person would easily recognize the need for a doctor's attention. *Id.* Indications that a prisoner has a "serious" need for medical treatment include the existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; and the existence of chronic and substantial pain. *See McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992) (cited in *Riddle v. Mondragon*, 83 F.3d 1197, 1202 (10th Cir. 1996)).

Prison officials act with deliberate indifference to an inmate's health if they know that he faces a substantial risk of serious harm and disregard that risk by failing to take reasonable measures to abate it. *See Farmer v. Brennan*, 511 U.S. 825, 835-37 (1994). Such indifference may be proven by showing that prison officials intentionally denied, delayed access to, or interfered with an inmate's necessary medical care. *See Estelle*, 429 U.S. at 104-05; *Jones v. Hannigan*, 959 F. Supp. 1400, 1406 (D. Kan. 1997). Under this standard, plaintiff must show more than a negligent or inadvertent failure to provide adequate medical care and more than a mere difference of opinion between him and the prison medical staff regarding the proper course of treatment. *See Johnson v. Stephan*, 6 F.3d 691, 692 (10th Cir. 1993); *Smart v. Villar*, 547 F.2d 112, 114 (10th Cir. 1976); *Jones*, 959 F. Supp. at 1406. Accidental or inadvertent failure to

provide adequate medical care, or negligent diagnosis or treatment, do not constitute a medical wrong under the Eighth Amendment. *See Ramos*, 639 F.2d at 575; *Riddle*, 83 F.3d at 1203. Similarly, a prisoner's difference of opinion regarding the medical treatment he has received will not support a claim of cruel and unusual punishment. *See Olson v. Stotts*, 9 F.3d 1475, 1477 (10th Cir. 1993); *Stephan*, 6 F.3d at 692; *Ramos*, 639 F.2d at 575.

Defendants concede that plaintiff has established a question of fact regarding whether he complained about his finger during the four days he was in segregation. Defendants argue, however, that this question of fact does not preclude summary judgment on plaintiff's claim that defendants failed to provide him adequate medical treatment. Defendants argue that plaintiff has not established that a risk of serious harm existed or that defendants understood that a serious risk of harm existed. Moreover, defendants argue that because plaintiff was provided medical treatment on an ongoing basis for a variety of issues, including his finger, he cannot show they were deliberately indifferent to his medical needs. Plaintiff does not deny that he had complete access to medical care, but claims that defendants did not immediately provide medical treatment when they first learned of his finger injury. Plaintiff contends that defendants delayed providing him treatment for 105 days after he injured his finger, and that by the time he was seen by a doctor, his finger had improperly healed and the damage to it was permanent and irreparable.

A reasonable jury may conclude that the alleged injury to plaintiff's finger was serious. Defendants' records establish that plaintiff's finger was, in fact, fractured. However, the court finds that plaintiff cannot establish that defendants intentionally denied, delayed access to, or interfered with his necessary medical care. Plaintiff states that he injured his finger and began complaining about it on July 9, 2000. Defendant Treaster also noticed plaintiff's finger as early as July 13, 2000. Plaintiff saw P.A. Diener on July 14, 2000,

albeit for another complaint, and told P.A. Diener that he had injured his finger. Apparently, P.A. Diener felt that no treatment was necessary for the injury at that point. The next time that plaintiff complained about his finger, on August 21, 2000, plaintiff promptly saw P.A. Diener on August 23, 2000. At that time P.A. Diener x-rayed the finger and diagnosed it as fractured. From there, plaintiff was treated by two different orthopedists.

The undisputed facts before the court demonstrate that plaintiff received medical treatment within five days of injuring his finger, and that defendants addressed his complaints about his finger from that point on within days of plaintiff making them. At the most, plaintiff might be able to show that P.A. Diener was negligent in failing to diagnose the fracture and offer plaintiff treatment for his finger on July 14, 2000, and/or that medical personnel provided inadequate care by not showing him how to properly apply the splint.³ Negligence does not, however, rise to the standard necessary to establish that defendants acted with deliberate indifference to plaintiff's medical needs. *See Estelle*, 429 U.S. at 104-106; *Johnson*, 6 F.3d at 692; *Smart*, 547 F.2d at 114; *Jones*, 959 F. Supp. at 1406; *see also Ramos*, 639 F.2d at 575; *Riddle*, 83 F.3d at 1203. The court thus grants defendants summary judgment on plaintiff's medical treatment claim.

B. Conditions of Confinement Claim/Assault Claim

Plaintiff claims that the conditions of his confinement while he was in segregation for the four days in July 2000 were unconstitutional. Plaintiff specifically claims that, during the four days he was in segregation, he was not allowed to send out or receive mail, not allowed to contact his attorney, not allowed to shower or clean the cell, and was unable to drink water, wash his face, or brush his teeth because there was no water pressure in his cell. Plaintiff also claims that, in September 2000, while he was in segregation,

³ P.A. Diener is no longer a defendant in this lawsuit.

defendant Thomas threatened him with physical harm.⁴ While disputing the facts set forth by plaintiff regarding these claims, defendants argue that, even if the facts as alleged by plaintiff are true, both claims are barred by the PLRA because plaintiff does not allege, nor is there any evidence, that plaintiff suffered any physical harm as a result of the conditions during his segregation or as a result of the alleged threat of physical harm.

The court finds that plaintiff has failed to offer any evidence that he suffered physical injury as a result of the conditions of his confinement while he was in segregation or as a result of allegedly being threatened with physical harm. Moreover, with regard to these claims, plaintiff's amended complaint requests only monetary damages in the amount of \$10,000.00 "for pain and suffering, and cruel and unusual punishment, Rice County Sheriff's Dept. put me through while being held for court." No § 1983 action can be brought unless plaintiff has suffered physical injury in addition to mental and emotional harms. 42 U.S.C. § 1997(e)e; *see also Perkins v. Kan. Dep't of Corr.*, 165 F.3d 803, 807 (10th Cir. 1999); *Smith v. Bd. of County Comm'rs of County of Lyon*, 216 F. Supp. 2d 1209, 1223 (D. Kan. 2002).⁵ Defendants are thus entitled to summary judgment on these claims.

C. Access to Legal Materials Claim

⁴ The court notes that plaintiff's amended complaint and his pleadings in opposition to summary judgment contradict each other regarding whether the alleged threat of assault by defendant Thomas occurred while he was housed in segregation or in general population housing.

⁵ In his opposition to defendants' summary judgment motions, plaintiff claims that the PLRA does not bar an award of nominal damages for violations of a prisoner's rights, even when the violation is based on allegations of only emotional or mental injury. The court will not consider claims which plaintiff did not include in his complaint and presents for the first time in a response brief. *See Turner*, No. 00-3456, 2001 WL 1715793, at *3.

Plaintiff alleges that he began complaining about not having access to legal materials and information in mid-January 2001. In response to plaintiff's request for information on rights and statutes, defendants referred plaintiff to his court-appointed attorney on his criminal case. In a request form dated February 2, 2001, plaintiff indicated that he was obtaining the requested statutes from his attorney. Defendants argue that plaintiff had access to the courts and legal information through his court-appointed attorney on his criminal case, and that plaintiff's court-appointed counsel had represented to defendants that he was assisting plaintiff with his civil claims. Defendants further argue that plaintiff has alleged no actual harm as a result of allegedly being denied access to legal materials, and thus his claim must fail. Plaintiff contends that having access to his court-appointed attorney, who was not obligated to pursue or advise him on civil claims, did not afford him meaningful access to the courts under *Bounds v. Smith*, 430 U.S. 817 (1977).

Prison officials are required to protect the constitutional right of prisoners to access to the courts under the Fifth and Fourteenth Amendments. *Bounds*, 430 U.S. at 821-22. Prison officials can safeguard that access either by providing inmates an adequate law library or adequate assistance from persons trained in the law. *Id.* at 828. Prisoners are entitled to meaningful, but not total or unlimited access. *Id.* at 823. A prisoner's right of access "has not been extended . . . to apply further than protecting the ability of an inmate to prepare a petition or complaint." *Wolff v. McDonnell*, 418 U.S. 539, 576 (1974). Prison officials cannot affirmatively hinder a prisoner's attempts to prosecute a nonfrivolous claim. *Green v. Johnson*, 977 F.2d 1383, 1389 (10th Cir. 1992). "The choice among various methods of guaranteeing access to the courts lies with prison administrators, not inmates or the courts." *Arney v. Simmons*, 26 F. Supp. 2d 1288, 1296 (D. Kan. 1998). Moreover, to allege an unconstitutional restriction on the right of access under *Bounds*, plaintiff must plead and prove actual injury by showing that the denial of legal resources hindered

his efforts to pursue a particular case. *See Lewis v. Casey*, 518 U.S. 343, 351-352 (1996); *Twyman v. Crisp*, 548 F.2d 352, 357 (10th Cir. 1978); *Arney*, 26 F. Supp. 2d at 1296.

The undisputed facts demonstrate that plaintiff's court-appointed counsel did not limit his assistance to plaintiff only to plaintiff's criminal case. Plaintiff has admitted that he received from his court-appointed counsel information regarding statutes he requested in pursuing his civil case against defendants. Moreover, plaintiff's court-appointed counsel wrote a letter to defendant Gillespie on December 1, 2000, detailing plaintiff's rights to medical treatment for his injured finger and stating that he would protect plaintiff's legal remedies on a pro bono basis if plaintiff did not receive necessary medical treatment. This correspondence occurred well before defendants referred plaintiff to his court-appointed counsel for legal research assistance in January 2001. Once defendants received this correspondence, they had every reason to believe that plaintiff was being assisted on his civil rights claims by legal counsel. Defendants did not provide plaintiff with access to legal resources, but plaintiff had access to alternative sources of legal assistance.

Plaintiff filed his initial complaint in this matter in October 2001, well within the statute of limitations on his claims. Plaintiff has not alleged that he has missed court dates, was unable to make timely legal filings, was denied legal assistance to which he was entitled, or lost a case which could have been won. *See Arney*, 26 F. Supp. 2d at 1296. There is no evidence that defendants impeded plaintiff's contact with the courts, his access to his court-appointed counsel, or that they would have impeded his access to any legal assistance his court-appointed counsel might have obtained for him. The fact that plaintiff received legal research assistance on his civil case from his court-appointed attorney, coupled with the fact that plaintiff has failed to allege an actual injury resulting from the alleged denial of legal resources while he was incarcerated in the Rice County jail, negate plaintiff's claim that defendants violated his right of access to the courts. *See*

Love v. Summit County, 776 F.2d 908, 913-915 (10th Cir. 1985) (holding that inmate's constitutional right of access to the courts was not violated by county's refusal to grant inmate access to county law library to challenge his conditions of confinement when inmate had access to legal counsel to pursue his civil rights claims at all times during his incarceration). Defendants are thus entitled to summary judgment on this claim.

D. State Law Claims

Plaintiff's amended complaint also alleges that defendants' actions violated Kan. Stat. Ann. §§ 19-1919 and 19-811. Federal district courts have supplemental jurisdiction over state law claims that are part of the "same case or controversy" as federal claims. 28 U.S.C. § 1367(a). "[W]hen a district court dismisses the federal claims, leaving only supplemented state claims, the most common response has been to dismiss the state claim or claims without prejudice." *United States v. Botefuhr*, 309 F.3d 1263, 1273 (10th Cir. 2002) (quotation marks, alterations, and citation omitted). If the parties have already expended "a great deal of time and energy on the state law claims," it is appropriate for the district court to retain supplemented state claims after dismissing all federal questions." *Villalpando v. Denver Health & Hosp. Auth.*, 2003 WL 1870993, at *5 (10th Cir. 2003) (citing *Botefuhr*, 309 F.3d at 1273). Here, the court finds no compelling reason to retain jurisdiction over plaintiff's state law claims, and therefore dismisses them without prejudice.

E. Eleventh Amendment Immunity

Defendants assert the defense of Eleventh Amendment immunity with regard to plaintiff's claims against defendants Bundy and Gillespie. Because the court has granted summary judgment to defendants and dismissed plaintiff's state law claims, the court need not reach the merits of this issue.

IT IS THEREFORE ORDERED that defendants Tracy Bonham, Steve Bundy, Patrissa Geniuk, Milton Gillespie, Cody Gorfourth, Tom Thomas, and Brian Thressters' (Brian Treaster) Motion for Summary Judgment (Doc. 55) and defendant Randy Galliard's Motion for Summary Judgment (Doc. 76) are granted in accordance with this memorandum and order.

IT IS FURTHER ORDERED that this case is dismissed as to defendants Tracy Bonham, Steve Bundy, Randy Galliard, Patrissa Geniuk, Milton Gillespie, Cody Gorfourth, Tom Thomas, and Brian Thresster (Brian Treaster).

Dated this 25th day of March 2004, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge